

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. Support for the amended claims can be found in the specification as originally filed, *inter alia*, on page 5, lines 3-6, and 19-25. Claims 19-23 are added. Support for new claims 19-23 can be found in the specification as originally filed, *inter alia*, on page 3, lines 4-17; page 5, lines 5-6; page 8, lines 10-15.

This amendment adds and amends claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier. After amending the claims as set forth above, claims 1-23 are now pending in this application.

Claim Objection

On page 2 of the Office Action, the PTO has objected to claim 7 for lack of proper antecedent basis for the term “the plug.” Applicants have amended claim 7 to depend from claim 6, thus providing proper antecedent basis.

Rejection Under 35 U.S.C. § 103

On page 3 of the Office Action, the PTO has rejected claims 1, 4, 5, and 7-9 under 35 U.S.C. § 103(a) as allegedly being unpatentable over PCT Publication Number WO 00/78226 to Akerfeldt *et al* (hereafter “WO ‘226”) in view of U.S. Patent 6,949,113 to Van Tassel *et al*. (hereafter “Van Tassel”). In addition, on page 5 of the Office Action, the PTO has rejected claims 1-3, 6, and 8-18 under 35 U.S.C. § 103(a) as allegedly being unpatentable over WO ‘226 in view of U.S. Patent 6,361,551 to Torgerson *et al*. (hereafter “Torgerson”). Applicants traverse this rejection for at least the reasons set forth below.

The framework for the objective analysis for determining obviousness under §103 requires:

1. Determining the scope and content of the prior art;
2. Ascertaining the differences between the claimed invention and the prior art;
3. Resolving the level of ordinary skill in the pertinent art; and

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Teleflex, Inc. v. KSR Int'l Co., 127 S. Ct. 1727, 82 USPQ2d 1385 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). In order to establish a *prima facie* case of obviousness, all the claim limitations must be taught or suggested by the prior art. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). See MPEP §2143.03.

The present invention is directed to medical sealing devices and methods for sealing a percutaneous (through the skin) puncture in a wall of a blood vessel in a patient. Such punctures are usually made in the leg or arm of a patient to access a patient's vascular (blood) system for some surgical procedure. At the completion of the surgical procedure, the puncture must be closed. As shown, for example, in Figure 2, a sealing member 12 and an outer member 14 seal the blood vessel.

As discussed in the first paragraph of the detailed description in this application, the invention is specifically directed to the problem of secondary bleeding or oozing into the incision canal.

None of the cited references are directed to solving this problem of secondary bleeding or oozing into an incision canal, and none provide a solution to this problem. The invention solves this problem by providing an elongated member, which holds together the sealing element and the outer member, that comprises a haemostatic material configured to introduce the haemostatic material into the incision canal to reduce secondary bleeding into the incision canal. The independent claims have been amended to further define the invention in this regard.

The prior art does not disclose or suggest the claimed elongated member, which holds together the sealing element and the outer member, that comprises a haemostatic material configured to introduce the haemostatic material into the incision canal to reduce secondary bleeding into the incision canal.

Van Tassel is directed to a device inserted into an atrial appendage for blocking blood from entering the atrial appendage. Van Tassel, Abstract. An atrial appendage is a sac located within the atrium of the heart, which is part of the patient's vascular system. Van Tassel, Col. 4, lns. 20-22; Figure 4. In contrast, the present invention is used outside of the patient's vascular system. A sac located within the atrium of the heart is a different and

distinct area of the body from an incision canal in an artery in a leg or arm. Also, Van Tassel does not disclose an elongated member comprising haemostatic material at all.

Torgerson is directed primarily to a process for making “collagen fibers ... to prepare hemostatic fabrics to control bleeding.” Abstract. As indicated in the Background of the Invention of Torgerson, Torgerson addresses certain problems with prior art materials, for example, the need for refrigeration and the need to reconstitute (add water to) certain materials. Torgerson does not address oozing or teach or suggest its solution.

The prior art does not suggest the arrangement set forth in the amended independent claims. If an independent claim is nonobvious under § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP 2143.03. Thus, Applicants submit that claims 2-14 and 16-18, each of which ultimately depends from independent claims 1 or 15, are also non-obvious at least by virtue of their dependency from claims 1 or 15.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under § 103.

Newly Added Claims

In this response, Applicants have added claims 19-20 which depend from claim 1 and claims 21-22 which depend from claim 15. Applicants believe that new claims 19-22 are allowable by virtue of their dependency from independent claims 1 and 15 and also because of the additional features recited in claims 19-22.

Applicants have added independent claim 23. WO '226, Van Tassel, and Torgerson, whether taken individually or in combination, fail to teach or suggest the claimed technique to treat secondary bleeding. Thus, Applicants believe that the outstanding rejections under 35 USC §103(a) do not properly apply to newly added claim 23.

CONCLUSION

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

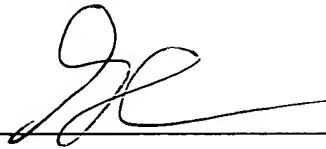
The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date January 15, 2008

By

A handwritten signature in black ink, appearing to be 'GL', is written over a horizontal line.

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